TANG SUNG TECK

v.

CHIN LIAN LONG MOTOR VEHICLE CO BHD

HIGH COURT SABAH & SARAWAK, KUCHING
RAVINTHRAN PARAMAGURU JC
[JUDICIAL REVIEW NO: JR-3-2009-III]
20 JANUARY 2010

LABOUR LAW: *Employment - Dismissal - Misconduct - Allegations of - Whether proved - Whether applicant was 'unreasonable, discourteous and difficult' - Whether unauthorized interview given by applicant to the press considered a serious misconduct - Whether there was evidence of victimization of applicant - Whether applicant's misconduct justified extreme punishment of summary dismissal - Whether Industrial Court erred in its findings*

This was an application for an order of *certiorari* to quash the decision of the Industrial Court. Briefly, the applicant was hired as the general manager of the respondent, a public transport company. The applicant argued that the decision of the Industrial Court that found instances of misconduct on the applicant's part was tainted with illegality and irrationality which no reasonable tribunal would have arrived at. It was the applicant's submission that (i) there was no evidence to support the finding of the Industrial Court that the applicant was guilty of misconduct by being 'unreasonable, discourteous and difficult to the company's directors and supporting staff'; (ii) that the Industrial Court was wrong to consider the evidence of the alleged unauthorized interview that the applicant allegedly gave to the Berita Petang reporter as it was not a ground cited in the letter of termination; (iii) the Industrial Court had improperly omitted to consider the issue as to whether the applicant had been victimized by his employers by withdrawing RM1,000 allowance from the applicant; (iv) whether applicant's misconduct justified extreme punishment of summary dismissal.

Held (dismissing the application):

(1) In considering whether there was evidence to justify the allegations that the applicant was 'discourteous, unreasonable and difficult', the Industrial Court had considered the letters the applicant had written to the respondent. The applicant had

written very rude and 'mocking' as well as undiplomatic letters. The learned Chairman concluded that the applicant was guilty of misconduct because of his confrontational attitude ('charging at his superiors with reckless and tactless abandon') towards his superiors as evidenced by the letters and his behaviour at the workplace. The decision of the Industrial Court was not one that was so unreasonable that it defied logic. His confrontational and belligerent attitude had made it impossible for the respondent to allow him to continue working as its general manager. He held a leadership position in the respondent company and therefore it was not unreasonable of the respondent to consider his confrontational attitude as coming within the ambit of misconduct. After having considered the circumstances in which the workman in question had challenged the authority of his employer, the learned Chairman found him guilty of misconduct. (para 20)

(2) There was no dispute that the Berita Petang newspaper had published an article about the respondent and their business strategy of advertising on their buses. No consent was given to the applicant to give an interview to the press. The applicant had credited himself for the innovations and increased efficiency of the company and had posed for a photograph. All this led the learned chairman to disbelieve the applicant's defence that the interview was unplanned and without his knowledge. There was no error in the chairman's findings. The act of giving an unauthorized interview in which he gave credit to himself behind the back of his superiors would come within the ambit of cl. 10(a). The chairman's decision was not tainted with 'Wednesbury unreasonableness' or that his decision was tainted with illegality or rationality. The granting of an unauthorized interview about the company affairs could come under the general category of serious misconduct in cl. 10(b). (paras 21 & 23)

(3) The learned chairman had dealt with the facts surrounding the withdrawal of the RM1,000 temporary allowance which counsel for applicant said had contributed to the souring of the relationship between the parties. The Industrial Court found that the cessation of the temporary allowance of RM1,000 to the applicant was in accordance with his contract of employment. The Employment Agreement had envisaged that

the allowance was not permanent and the chairman had accepted the evidence of the employer's directors. In the premises, there was no ground to argue that the Industrial Court had fallen into any error of law in coming to this conclusion. The chairman had considered the propriety of the withdrawal of the temporary allowance because the applicant suggested that he was victimized by his employers who withdrew his allowance. Therefore it could not be said that the chairman had improperly omitted to consider this issue. (para 23)

(4) The applicant had been employed for about two years and nine months at the time of his dismissal. He was hired as the general manager which was a responsible leadership position in the company. However, for at least seven months before his dismissal, he had been continuously challenging and confronting his directors in a very rude and rebellious manner. The last straw was the unauthorized interview. Therefore, it could not be said that the punishment of dismissal of the applicant was disproportionate to the misconduct committed by the applicant. The applicant's conduct did not contribute to a harmonious climate in the workplace and therefore it was impossible for the respondent to retain him in the position of general manager. The finding of the Industrial Court did not offend the principle of proportionality or was otherwise perverse or irrational. (para 24)

Case(s) referred to:

Anisminic v. Foreign Compensation Commission [1969] 2 AC 147 ***(refd)***

Chief Constable of the North Wales Police v. Evans [1982] 1 WLR 1155 ***(refd)***

Civil Service Unions v. Minister for Civil Service [1985] AC 374 ***(refd)***

Dreamland Corporation (M) Sdn Bhd v. Choong Chin Sooi & Industrial Court of Malaysia [1988] 1 CLJ 1; [1988] 1 CLJ (Rep) 39 SC ***(refd)***

Majlis Perbandaran Seberang Perai v. Tropiland Sdn Bhd [1996] 3 CLJ 837 CA ***(refd)***

Menara Panglobal Sdn Bhd v. Arokianathan Sivapiragasam [2006] 2 CLJ 501 CA ***(refd)***

Milan Auto Sdn Bhd v. Wong Seh Yen [1995] 4 CLJ 449 FC ***(refd)***

R Rama Chandran v. Industrial Court of Malaysia & Anor [1997] 1 CLJ 147 FC ***(refd)***

Telekom Malaysia Kawasan Utara v. Krishnan Kutty Sanguni Nair & Anor [2002] 3 CLJ 314 CA ***(refd)***

Wong Yuen Hock v. Syarikat Hong Leong Assurance Sdn Bhd & Another Appeal [1995] 3 CLJ 344 FC ***(refd)***

Legislation referred to:
Industrial Relations Act 1967, s. 20

Other source(s) referred to:
Professor MP Jain's, *Administrative Law of Malaysia and Singapore*, 3rd edn, p 714

For the applicant - Henry Ling; M/s Ling & Wong Advocates
For the respondent - Francis Wee; M/s Wee & Co Advocates

Reported by Suhainah Wahiduddin

JUDGMENT

Ravinthran Paramaguru JC:

Brief Facts

[1] This is an application for an order of *certiorari* to quash the decision of the Industrial Court in Award No. 89 of 2009 which was delivered on 23 January 2009. The brief facts of the case are as follows.

[2] The respondent is a public transport company. The applicant was hired as its general manager from 1 July 1998 until his dismissal on 23 May 2001. His salary was RM3,500 with "a temporary all-inclusive allowance of RM1,000 per month". The ground of termination is stated in the letter of dismissal as follows:

> It is impossible for the Company to allow you to continue your tenure of office in the capacity of General Manager because you have proven to be unreasonable, discourteous and difficult to the Company's Directors and supporting staff. You have also been absent from work without any authority and explanation since 22/5/2001.

[3] From the findings of the Industrial Court, it appears that the relations between the applicant and the respondent became strained since the cessation of the so-called "temporary allowance" of RM1,000 on 31 August 2000. Other incidents did not help to establish a more harmonious relationship at the workplace between the applicant and the respondent. The applicant had occasion to write to his employer to complain that repairs to the car provided for his personal use had been stopped. He also complained about

his annual leave entitlement. On the part of the respondent, there were complaints that the applicant had been frequently absent from office and had behaved unreasonably. During the hearing before the Industrial Court, the respondent's witnesses testified that the applicant had breached his employment contract by granting an interview to the Berita Petang newspaper reporter without the consent or consultation with his managing director.

Award Of Industrial Court

[4] The matter was referred by the Minister to the Industrial Court on 6 January 2004. The hearing commenced on 27 June 2007 and the award was handed down on 23 January 2009. The fact that the application had been dismissed by the respondent was common ground between the parties. The dismissal was not preceded by domestic inquiry. The Industrial Court cited *Dreamland Corporation (M) Sdn Bhd v. Choong Chin Sooi & Industrial Court of Malaysia* [1988] 1 CLJ 1; [1988] 1 CLJ (Rep) 39 and noted that both parties agreed that summary dismissal of an employee without an inquiry is permissible in the case of misconduct. Therefore, I am of the view that nothing turns on the failure of the employer to hold a domestic inquiry before dismissing the applicant. An initial defect in not holding a domestic inquiry can be cured in the Industrial Court hearing (see also the case of *Milan Auto Sdn Bhd v. Wong Seh Yen* [1995] 4 CLJ 449 FC and *Wong Yuen Hock v. Syarikat Hong Leong Assurance Sdn Bhd & Another Appeal* [1995] 3 CLJ 344 FC).

[5] The only issue before the Industrial Court was whether the applicant was dismissed for just cause and excuse. As stated by Mohd Azmi FCJ in *Wong Yuen Hock v. Syarikat Hong Leong Assurance Sdn Bhd & Another Appeal (supra)* the function of the Industrial Court in dealing with a reference under s. 20 of the Industrial Relations Act 1967 is:

1. To determine whether the misconduct or irregularities complained of by the management as grounds of dismissal were in fact committed by the workman, and if so;

2. Whether such grounds constitute just cause and excuse for the dismissal.

[6] The letter of termination stated that the applicant was dismissed in accordance with cl. 10(b) of the Employment Agreement. The Industrial Court correctly directed itself that the burden of proof to establish just cause and excuse was on the employer (see *Telekom Malaysia Kawasan Utara v. Krishnan Kutty Sanguni Nair & Anor* [2002] 3 CLJ 314. The respondent called two witnesses: Mr. Tan Thiam Huat, its director, and Simon Chin, its managing director. The applicant was the only witness on his own behalf. The issue before the Industrial Court was whether the grounds given by the respondent in its letter of termination provided just cause and excuse to dismiss the applicant. The grounds given in the letter of termination was that the applicant was:

1. "unreasonable, discourteous and difficult to the Company's Directors and supporting staff" and

2. "that he was absent from work without any authority and explanation since 22/5/2001."

[7] In respect of the second ground, the Industrial Court found there was insufficient evidence to support the reasons given by the respondent. The applicant testified that he was on medical leave on 22 May 2001. He said he had called the company accountant to inform her that he was given medical leave. He forwarded the medical certificate later. However, by then the applicant had already been dismissed *via* the respondent's letter dated 23 May 2001. In respect of his alleged absences from the office on earlier dates, counsel for applicant is correct to submit that they were not cited as a reason for dismissal in the letter of termination. In any event, the learned Chairman considered his alleged earlier absences from office and concluded that there was not sufficient evidence to support the allegation of the respondent. Since this finding has not been taken as an issue in this judicial review application by the respondent, nothing more need to be said of it.

[8] In respect of the first ground of dismissal, ie, "unreasonable, discourteous and difficult to the company's directors and supporting staff", the learned Chairman found four instances of misconduct that provided sufficient evidence to support this ground. They are as follows:

1. The "mocking" letter dated 13 September 2000 that the applicant wrote to his managing director;

2. The applicant's demand for an apology from his managing director for castigating him for not removing the tinted glass in his office;

3. The applicant's accusation that the managing director was encroaching into areas of work;

4. The unauthorised interview that the applicant gave to the Berita Petang newspaper reporter.

[9] The letter dated 13 September 2000 was written in response to the explanation sought by the managing director in respect of the alleged absence of the applicant from office on specified dates. The letter that the applicant wrote reads as follows:

> If you said that I was absent from my place of work, then, could you tell me who is the person sitting in my office on the dates mentioned by you.

[10] The Industrial Court found his response to be contemptuous, mocking and sarcastic as the applicant was a general manager writing to his managing director. The second incident was in respect of the tinted glass in the office of the applicant. Apparently, the applicant was castigated by the managing director in a meeting for not removing it. Subsequent to that incident, the applicant wrote a memorandum to his managing director to demand an apology. The third incident was in respect of the letter written by the applicant to his managing director which accused him of encroaching into "his areas of job duties". The letter further intimated that if the company business suffered, the managing director would be responsible. The fourth incident was in respect of an interview that the applicant gave to a reporter from the Berita Petang newspaper. The respondent's witnesses testified that they had not given consent or authority to the applicant to give that interview. The Industrial Court accepted the evidence of the employer's witnesses on this point. The applicant denied that he intended to give an interview but had merely chit-chatted with the reporter. The Industrial Court however found the respondent's contention that the applicant had deliberately given the interview as more probable. The reasons given are that the applicant had posed for a photograph and had given the impression that the company's business had improved due to the innovation in the form of bus advertisements that he had introduced.

Grounds Of Application

[11] The grounds advanced by the applicant are as follows:

a. That the decision of the Industrial Court is so outrageous or unreasonable in the "Wednesbury sense" that no sensible person would have arrived at. In particular, the applicant says that the Industrial Court did not consider whether any of the grounds in the letter of termination constituted "serious misconduct" under cl. 10(b) of the Employment Agreement.

b. That the Industrial Court erred in law in invoking adverse inference against the applicant for failing to call the Berita Petang reporter.

c. That the Industrial Court erred in law and acted in excess of jurisdiction when it took into account the disclosure of company information in the said interview as an instance of misconduct. The applicant said that cl. 11 of the Employment Agreement did not provide this as a ground for dismissal.

d. That the respondent did not discharge its burden of proof in the Industrial Court hearing.

e. That the Industrial Court erred in law in holding that a single act of divulging the company's business information was sufficient to justify dismissal.

f. The Industrial Court erred in law by failing to act according to equity, good conscience and substantial merits of the case.

g. That the Industrial Court erred in law by failing to consider the following:

(i) The Industrial Court failed to consider whether the respondent acted *mala fide* by withdrawing the allowance of RM1,000.

(ii) That the letter dated 13 September 2000 was issued eight months before issuance of the termination letter and it should not have been considered by the Industrial Court.

(iii) That the Industrial Court had considered the "tinted glass" incident and other minor incidents cumulatively and had failed to consider whether the applicant was being victimised by the respondent in order to get rid of him.

(iv) That the Industrial Court erred in relying on grounds not stated in the letter of termination. A

(v) That the Industrial Court failed to consider the totality of the evidence.

[12] Counsel for applicant in submitting the above grounds argued that the decision of the Industrial Court is tainted with illegality and irrationality which no reasonable tribunal would have arrived at. B

[13] The principal complaint that can be discerned in the above grounds are as follows: C

a. That there was no evidence to support the finding of the Industrial Court that the applicant was guilty of misconduct by being "unreasonable, discourteous and difficult to the company's directors and supporting staff". D

b. That the Industrial Court was wrong to consider the evidence of the alleged unauthorised interview that the applicant allegedly gave to the Berita Petang reporter as it was not a ground cited in the letter of termination. E

[14] Clause 10(b) of the Employment Agreement reads as follows:

> The Company shall have the right to terminate this Agreement without notice or payment *in lieu* of notice in the event of serious misconduct or persistent unpunctuality neglect of duty or breach of any rules or regulations of the Company or in the event that the Employee is convicted of a serious criminal offence or had committed an act of bankruptcy. F

[15] This clause was cited in the termination letter. Counsel for applicant argued that the Industrial Court did not consider whether G the acts of the applicant amounted to being "unreasonable, discourteous and difficult" and whether the alleged acts were serious enough for summary termination as coming within the ambit of "serious misconduct" under cl. 10(b). Counsel for respondent submitted that the court should not examine the decision of the H Industrial Court on its merits as the judicial review is only concerned with decision making process and not with decision itself (see *Chief Constable of the North Wales Police v. Evans* [1982] 1 WLR 1155). However, inroads have been made into this traditional doctrine in English Law as well as Malaysian Law since the *Evans* I case. The current view is that the decision can be examined for

process as well as substance if the decision is affected by illegality, irrationality, procedural impropriety and proportionality (see the judgment of Edgar Joseph FCJ in *R Rama Chandran v. Industrial Court of Malaysia & Anor* [1997] 1 CLJ 147 and the speech of Lord Diplock in *Civil Service Unions v. Minister for Civil Service* [1985] AC 374. The Court of Appeal in *Majlis Perbandaran Seberang Perai v Tropiland Sdn Bhd* [1996] 3 CLJ 837 commented on the ground-breaking case of *R Rama Chandran v. Industrial Court of Malaysia & Anor (supra)* as follows:

> ... very recently, it was thought that when the exercise of discretion by a public decision-maker is challenged on the ground of illegality or 'Wednesbury unreasonableness', the court merely examines the decision-making process and not the correctness of the decision itself on merits. The fallacy of this approach has now been exposed by the majority decision of the Federal Court in *Ramachandran v. The Industrial Court of Malaysia & Anor* [1997] 1 MLJ 145.

[16] Therefore the decision of public decision-maker can be examined for substance if the said decision had been affected by illegality, irrationality, procedural impropriety and proportionality. Although the decision of an administrative tribunal can be examined for substance on the above grounds, the court would be slow to interfere with findings of fact unless they are not supported by evidence. As stated in Professor MP Jain's *Administrative Law of Malaysia and Singapore* (3rd edn), at p. 714 (quoted in the case of *Menara Panglobal Sdn Bhd v. Arokianathan Sivapiragasam* [2006] 2 CLJ 501):

> The courts have emphasized time and again that *certiorari* should not be used by way of a disguised appeal from findings of fact. The courts have thus laid down the norm that they would not interfere with the findings of fact by a body unless the same are completely unsupported by any evidence. This is known as the 'no evidence' rule. A finding having no evidence to support it is characterized as a 'perverse' finding of fact; it is regarded as an effort of law and is quashed. If, however, there is some evidence to support a finding of fact, the courts do not interfere with it. The courts do not regard it as their function to interfere with the findings of fact by a body merely because of insufficiency or inadequacy of evidence.

[17] In the case cited above, the Court of Appeal gave the following guidelines in reviewing a decision of the Industrial Court:

> (i) judicial review is not an appeal from a decision but a review of the manner in which the decision was made;

(ii) the High Court is not entitled on an application for judicial review to consider whether the decision itself, on the merits of the facts, was fair and reasonable;

(iii) the High Court, through judicial review, should not introduce technicalities of the court of law to the Industrial Court; this would certainly be so as s. 30(5) of the Act imposes a duty upon the Industrial Court to have regard to substantial merits of a case rather than to technicalities and it also requires the Industrial Court to decide a case in accordance with equity and good conscience;

(iv) the main and only function of the Industrial Court in dealing with a reference under s. 20 of the Act is to determine whether the misconduct or irregularities complained of by the management as to the grounds of dismissal were in fact committed by the workman and if so, whether such grounds constitute just cause or excuse for the dismissal;

(v) the Industrial Court should not be burdened with the technicalities regarding standard of proof, the rules of evidence and procedure that are applied in the court of law;

(vi) the High Court will not interfere with finding of facts by the Industrial Court unless the same are completely unsupported by evidence and further, will not interfere merely because it may come to different conclusions on facts on the basis of the same evidence; weighing and assessing the evidence of the witnesses is the function of the Industrial Court and not that of the High Court.

[18] However if an error of law is committed or some relevant factor is not considered or some irrelevant factor is taken into consideration, the decision of the Industrial Court can be examined for substance as an inferior tribunal has no discretion to commit an error of law (*Anisminic v. Foreign Compensation Commission* [1969] 2 AC 147).

[19] Having considered the above principles, I shall now proceed to consider whether there are sufficient grounds to interfere with the decision of the Industrial Court.

Confrontational Attitude Of Applicant

[20] The first ground of dismissal cited in the termination letter is that the applicant was "discourteous, unreasonable and difficult to the company's directors and supporting staff". In considering whether there was evidence to justify this ground, the Industrial

A Court considered the three letters that the applicant had written to the respondent. On 13 September 2000 he had written a very rude and "mocking" letter to his managing director. On 10 April 2001, he accused his managing director of encroaching into areas of work and had sounded a warning that he cannot be held responsible if
B business suffered as a result. Finally, on 11 April 2001, he wrote a memo to his managing director demanding an apology for reprimanding him because he had failed to remove the tinted glass in his office. Counsel for applicant had submitted that the applicant was being merely undiplomatic in writing those letters. He also
C submitted that the first letter was written some seven months before his dismissal. The learned Chairman considered all the confrontational letters he wrote cumulatively in determining whether the applicant had been guilty of misconduct. He also considered the evidence of the respondent that the applicant had been "fond of"
D giving deadlines to his managing director. On one occasion he had asked his managing director to put in writing within three days a directive that was given to him verbally or else he would assume that the managing director was abusing his power. The learned Chairman concluded that the applicant was guilty of misconduct
E because of his confrontational attitude ("charging at his superiors with reckless and tactless abandon") towards his superior officers as evidenced by the above letters and his behaviour at the workplace. In my opinion, the decision of the Industrial Court is not one that is so unreasonable that it defies logic. The letter of termination
F states that the applicant had been unreasonable, discourteous and difficult. I do not think the issue here is whether the applicant has been undiplomatic or rude but whether his confrontational and belligerent attitude had made it impossible for the respondent to allow him to continue working as its general manager. He held a
G leadership position in the respondent company and therefore it was not unreasonable of the respondent to consider his confrontational attitude as coming within the ambit of misconduct. Counsel for applicant submitted that the learned Chairman did not consider whether there was "serious misconduct" as provided in cl. 10(b). I
H should think that although the learned Chairman used the word "misconduct" as opposed to "serious misconduct" in his judgment, it is obvious that he considered the behaviour of the applicant as serious. He had cited cl. 10(b) of the Employment Agreement and discussed at length why such conduct justifies dismissal. The
I Industrial Court had been entrusted by Parliament to inquire into

the fairness of dismissal of a workman. After having considered the circumstances in which the workman in question had challenged the authority of his employer, the learned Chairman found him guilty of misconduct.

Whether The Interview To The Press Was Wrongly Taken Into Account?

[21] Counsel for applicant submitted that the interview that the applicant allegedly gave to the Berita Petang reporter in which he discussed the business strategies of the respondent should not have been taken into account. The learned Chairman had stated in his award that the interview alone justifies dismissal of the applicant. He made a finding of fact that the applicant did not merely "chit chat" with the reporter but had purposefully given an interview. He rejected the defence of the applicant that he had no knowledge that his discussion with the reporter would be published in the Berita Petang newspaper. The reporter was not called as a witness by the applicant and the learned Chairman drew an adverse inference on this account. Counsel for applicant submitted that this was a wrong direction as there was no burden on his client to prove misconduct. I do not think that the learned Chairman fell into any error here. There is no dispute that the Berita Petang newspaper had published an article about the respondent and their business strategy of advertising on their buses. The learned Chairman accepted the evidence of the respondent and found as a fact that no consent was given to the applicant to give an interview to the press. Therefore, if the defence of the applicant was that he had not granted a formal interview but had merely chit-chatted with the reporter, it is incumbent on him to produce the evidence by the calling of the reporter in question. If the learned chairman had committed an error by drawing adverse inference, there were other pieces of evidence that justify his conclusion that the applicant was guilty of misconduct by giving the said interview. He referred to the detailed information about the company's business affairs especially as the "leader of bus-carried advertisements". He had credited himself for the innovations and increased efficiency of the company. He also referred to the photograph of the applicant for which he had obviously posed. All this led him to disbelieve his defence that the interview was unplanned and without his knowledge. For the foregoing reasons, I see no error of law in this finding.

[22] I shall now consider whether the learned Chairman was wrong in taking into account the interview given to the reporter in finding that he was guilty of misconduct. The learned Chairman held that the interview alone would have provided just cause and excuse for his dismissal. Counsel for applicant submitted that the said interview and disclosure of company business strategy was not cited in the letter of termination and therefore is an afterthought to justify the dismissal. He submitted that only cl. 10(b) which I reproduced earlier was cited in the letter of termination. The termination letter did not cite clause 11 which reads as follows:

> The Employee shall not at any time during his employment hereunder (except so far as is necessary and proper in the course of his employment) or afterwards disclose to any person any information as to the practice, business, dealings or affairs of the Company or any of the customers or clients or as to any other matter which may come to his knowledge by reason of his employment.

[23] It is the duty of the Industrial Court to determine whether the termination was for just cause and excuse. However, in my opinion the failure to cite this clause in the termination letter does not preclude the respondent from relying on the unauthorised press interview in considering whether the applicant was guilty of misconduct. The letter of termination was issued almost immediately after the news article in question was published in the Berita Petang newspaper. The respondent had cited unreasonable and discourteous behaviour on the part of the applicant and had cited cl. 10(b). Article 10(b) provides for dismissal on ground of misconduct. The respondent's witnesses had given evidence of misconduct on the part of the applicant who had adopted a confrontational attitude towards his superiors. The applicant may or may not have leaked company information to the reporter which could justify dismissal under cl. 11. However the question that arises is, whether the act of giving an unauthorised interview in which he gave credit to himself behind the back of his superiors would come within the ambit of cl. 10(a). The Industrial Court Chairman certainly thought so. He further thought that the letters that he had written challenging the authority of his superior and his generally insolent behaviour compounded his misconduct. I cannot see how it can be said that his decision is tainted with "Wednesbury unreasonableness" or that his decision is tainted with illegality or irrationality. The learned

Chairman had not taken into consideration any factor that is not relevant to the charge of misconduct. Surely the granting of an unauthorised interview about the company affairs can come under the general category of serious misconduct in cl. 10(b). Neither had he omitted to take into consideration any factor that was relevant. The learned Chairman had dealt with the facts surrounding the withdrawal of the RM1,000 temporary allowance which counsel for applicant said had contributed to the souring of the relationship between the parties. The Industrial Court found that the cessation of the temporary allowance of RM1,000 to the applicant was in accordance with his contract of employment. He was paid the said allowance for temporarily managing a subsidiary company called the Kuching-Matang Transport Company Sdn Bhd. The Industrial Court found that the allowance was stopped after giving the requisite notice provided for in the Employment Agreement. The applicant had protested that he had been promised orally that the allowance was permanent. However, the written Employment Agreement had envisaged that the allowance was not permanent and the learned Chairman of the Industrial Court accepted the evidence of the employer's directors on this point. In the premises, there is no ground to argue that the Industrial Court had fallen into any error of law in coming to this conclusion. The learned Chairman considered the propriety of the withdrawal of the temporary allowance because the applicant suggested that he was victimised by his employers who withdrew this allowance. Therefore, it cannot be said that the learned Chairman had improperly omitted to consider this issue.

[24] After having found that the applicant was guilty of misconduct, the learned Chairman proceeded to consider whether the misconduct justified the extreme punishment of summary dismissal. He discussed the degree of the misconduct. The applicant had been employed for about only two years and nine months at the time of his dismissal. He was hired as the general manager which is a responsible leadership position in the company. However, for at least seven months before his dismissal, he had been continuously challenging and confronting his directors in a very rude and rebellious manner. The last straw was the unauthorised interview. Therefore, it cannot be said that the punishment of dismissal of the applicant is disproportionate to the misconduct committed by the applicant. As the learned Chairman found and observed, his conduct

A did not contribute to a harmonious climate in the workplace and therefore it was impossible for the respondent to retain him in the position of general manager. It must be noted that the applicant was not a clerk or a peon but a general manager. In the premises I cannot say that the finding of the Industrial Court offended the
B principle of proportionality or was otherwise perverse or irrational.

[25] For all the above reasons, I dismiss the application with costs.

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